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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1976

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SUPREME COURT, U.S.

WILLIE LEE BELL,

Petitioner

§

-vs-

§

NO. 76-6513

THE STATE OF OHIO,

§

Respondent

§

*Peter's Reply Brief*

RESPONSE TO REPLY BRIEF OF RE-  
SPONDENT IN OPPOSITION TO PETI-  
TION FOR WRIT OF CERTIORARI

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In the Reply Brief in Opposition, the Respondent asserts that the issue of inadequate appellate review was "neither argued nor briefed in the Court of Appeals or the Supreme Court of Ohio" Reply, p. 11.

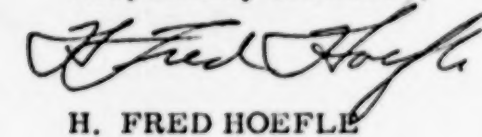
While the briefs in the Supreme Court of Ohio were filed prior to the decisions of this Court in Gregg v. Georgia, \_\_\_ US \_\_\_, 96 S. Ct. 2909 and the other death penalty cases decided on July 2, 1976, the issue of appellate review was argued extensively in oral argument before the Ohio Supreme Court. All proceedings in the Ohio Court of Appeals had terminated before Gregg, et. al. were decided. Further, the unconstitutionality of the Ohio Statutory scheme for imposition of the penalty of death was attacked from the trial court through all Ohio reviewing courts.

Respondent asserts that the issue presented concerning the burden of proof of a mitigating circumstance in light of Mullaney v. Wilbur was also neither briefed nor argued at any stage of the State appellate proceedings. That issue was argued briefly before the Ohio Supreme Court, and counsel recalls that Justice Celebrezze directed a specific question in this area to counsel for the Respondent during that argument.

While much is required of defense counsel in criminal cases, clairvoyance is not as yet a constitutionally required trait, and defense counsel are not required to anticipate the decisions of this Court, O'Connor v. Ohio, 385 US 92 (1966). It is sufficient that the constitutionality of the Ohio statutes was attacked consistently throughout the proceedings below. A review of the transcript of proceedings of the argument in the trial court on Petitioner's motion attacking the Ohio death penalty statutes reveals that many of the concerns manifested by this Court in the Gregg pentad were raised below.

The Petition for a writ of certiorari should be granted in this case and the judgment below reversed.

Respectfully submitted,



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